IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SEVENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 19362 of 2004

Between:

1 Sk. Naxam Ali, S/o. Babu Miya,
R/o. Koralapahad village, Kethepally Mandal,
Nalgonda District.
2 Sk. Sabha Begum, W/o. Sk. Nazam Ali,
R/o. Kethepally Mandal, Koralapahad village, Nalgonda District.
3 Baby Sk. Sania Mahaboob, D/o. Sk. Nazam Ali,
being minor, represented by her parents i.e., petitioners 1 & 2 herein.

..... PETITIONERS

AND

1 The Govt of A.P., rep. by its Secretary, Medical & Health Dept.,
Secretariat, Hyd.
2 The District Collector, Nalgonda District at Nalgonda.
3 The District LMedical Officer, nalgonda District at Nalgonda.
4 The Medical Officer, Primary Medical Health Centre, Kethapally Mandal, at
Kethepally, Nalgonda District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Direct the respondents i) to pay a sum of 3,00,000/- (Rupees Lakhs only)to the petitioners towards the harm and mental agony sustained by them because of the negligency on the part of the respondents; ii) Deposit a sum of Rs. 5,00,000/- (Five Lakhs only) in the name of the third (3) petitioner for her higher education and of her marriage; iii) pay a sum of Rs. 1,00,000/- (Rupees one lakh only) towards interim maintenance of the petitioners 2 & 3 for their better nutrition, medication etc., iv) provide the 3rd petitioner with free education, books, stationery, uniform and other facilities till she attains majority; v) award the petitioners exemplary costs of this writ petition; and pass.

Counsel for Petitioners:MR.GUNDLAPALLI LAXMI NARASIMHA RAO
Counsel for the Respondents: GP FOR MEDICAL HEALTH & FAMI.WELFARE

The Court, at the stage of admission, made the following :

ORDER

This writ petition is filed seeking direction to the respondents to pay compensation for the negligence of the doctors in performing Vasectomy operation on the first petitioner on 2.3.2001. It is alleged that even after the Vasectomy operation was performed on the first petitioner, the second petitioner, who is the wife of the first petitioner, got pregnancy and gave birth to the third petitioner which caused mental agony to the petitioners 1 and 2.

The doctor, who performed the alleged operation and issued the certificate dated 2.3.2001, has not been impleaded as respondent to the writ petition to answer the allegation that he was negligent in performing the operation. Even according to the petitioners, the factum of alleged negligence on the part of the doctor was noticed only when the second petitioner conceived, and further, the negligence and vicarious liability of the State has to be established with necessary pleadings and proof before the competent civil Court. Since the disputed questions of fact arise in this writ petition, the same cannot be adjudicated in exercise of jurisdiction under Article 226 of constitution of India.

Accordingly, the writ petition is dismissed. However, the petitioners are at liberty to approach the competent civil Court for necessary reliefs. No costs.

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A. GOPAL REDDY. J.

27th October, 2004

tsr.

To

1 The Secretary, Medical & Health Dept.,
Secretariat, Hyd.
2 The District Collector, Nalgonda District at Nalgonda.
3 The District LMedical Officer, nalgonda District at Nalgonda.
4 The Medical Officer, Primary Medical Health Centre, Kethapally Mandal, at Kethepally, Nalgonda District

5 Two CCs to Government Pleader for Medical Hea,th & Family Welfare, High Court Buildings, Hyderabad. (OUT).

4 Two CD copies.